

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	In Proceedings
)	Under Chapter 11
GOOSE CREEK OIL CO., INC.,)	
)	No. BK 86-30591
Debtor.)	
ROBERT D. HOLSAPPLE and)	
DIANE HOLSAPPLE,)	
)	No. BK 86-30592
Debtor.)	

MEMORANDUM AND ORDER

This matter is before the Court on Mark Twain Bank's ("Mark Twain") Motion to Approve Stipulated Order to Settle Mark Twain Bank's Motion for Relief from Stay and Debtors' Motion to Apply Funds. Debtors, Goose Creek Oil Company and Robert and Diane Holsapple, previously filed a motion to require Mark Twain to apply funds in its possession pursuant to security agreements held by it. Mark Twain filed a combined response and request for relief from stay, asking that it be allowed to collect all existing and future proceeds from the production of certain oil and gas leases held by the Bank as collateral. Debtors and Mark Twain then settled their dispute. The settlement agreement provides that Mark Twain shall collect the proceeds from the production of certain oil and gas leases, and shall then apply those proceeds to the aggregate outstanding indebtedness due Mark Twain from the debtors. Salem National Bank ("Salem Bank") filed an objection to the settlement, arguing that the operating expenses of the oil and gas leases are a priority administrative expense, and that Mark Twain should

contribute its share of operating expenses for all working leases in which it claims a security interest. Mark Twain claims that under section 506(c), 1) Salem Bank has no standing to object; 2) Salem Bank has not proved that Mark Twain has primarily benefited from, or caused Goose Creek's expenses; and 3) Salem Bank's objection is, in effect, a request that Goose Creek use Mark Twain's cash collateral without any provision for adequate protection.

Section 506(c) provides that "[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim."¹ The majority view is that section 506(c) can only be invoked by the Trustee or debtor in possession. As explained by the Court in In Re Interstate Motor Freight System IMFS, Inc., 71 B.R. 741 (Bankr. W.D. Mich. 1987):

The legislative history explains §506(c) as follows:

Any time the trustee or debtor in possession expends money to provide for the reasonable and necessary cost and expenses of preserving or disposing of a secured creditor's collateral, the trustee or debtor in possession is entitled to recover such expenses from the secured party or from the property securing an allowed secured claim held by such party. The plain language

¹Salem Bank contends that its position "may also be viewed as a request under §503(a) for payment of administrative expenses." (Memorandum of Salem National Bank, p. 2). Salem Bank has failed to substantiate its position in this regard. Additionally, while the Bank's Memorandum mentions section 503(a), most of the discussion in the Memorandum focuses on the applicability of section 506(c).

of §506(c) and its corresponding explanation would appear to restrict a recovery under §506(c) to the trustee and the debtor in possession, under 11 U.S.C. §1107(a), which gives the debtor in possession almost all of the powers of a trustee. A number of courts have held recovery under §506(c) is in fact so limited, and have accordingly barred other parties from recovering under §506(c).

Id. at 743 (citations omitted). See also In re Groves Farms, Inc., 64 B.R. 276, 277 (Bankr. S.D. Ind. 1986); In re Fabian, 46 B.R. 139, 141 (Bankr. E.D. Pa. 1985). The Court agrees with the majority view, and holds that under the facts of this case, Salem Bank lacks standing to raise a claim under 506(c).

Even assuming arguendo that Salem Bank does have standing, the Bank has not shown that the operating costs were expended primarily for the benefit of Mark Twain, or that Mark Twain caused or consented to these expenses. Section 506(c) and case law interpreting that section require that such a showing be made. See In re Flagstaff Foodservice Corp., 762 F.2d 10, 12 (2d Cir. 1985); Matter of Trim-X, Inc., 695 F.2d 296, 301 (7th Cir. 1982). As Mark Twain states, "Although it might appear on its face that Mark Twain is the primary beneficiary of these expenses because it is receiving the proceeds of the oil and gas runs, any benefit to Mark Twain is only incidental to the reorganization effort of Goose Creek." (Memorandum of Mark Twain Bank, p. 8). Accordingly, for the reasons stated above, Mark Twain's Motion to Approve Stipulated Order is GRANTED.

/s/ Kenneth J. Meyers

U.S. BANKRUPTCY JUDGE

ENTERED: October 8, 1987